IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16535 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTNU VIDHYALAY - Petitioner(s)

Versus

DIRECTOR OF PRIMARY EDUCATION & 3 - Respondent(s)

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Appearance :

MR RN SHAH for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 3.
MR ARPIT A KAPADIA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/02/2006

ORAL JUDGMENT

1.In the present petition, the petitioner-Trust which runs a school has objected to the action of the respondent authorities in granting recognition and

permission to respondent No.4 for running a primary school as also permission to one additional class for Standard 11.

2. The petitioner is a trust under which higher secondary school is being run. The petitioner has classes running from standard 1 to 12. It is the case of the petitioner that nearby to the school of the petitioner, respondent No.4 applied for recognition and for grant for running a primary school and also applied for permission to add one more class for standard 11. It is the case of the petitioner that the petitioner had objection to such recognition and permission being granted by the State authorities since according to the petitioner, the same would lead to unhealthy competition.

3. The Authorities however, by the order dated 7th January 2005 granted permission to respondent No.4 to add one more class to standard 11 in addition to the permission to run one class already granted to the said respondent. Similarly, by an order dated 11.5.2005, respondent No.4 was granted permission to run primary school. It may be noted that additional class of standard 11 permitted is made grantable whereas the primary school permitted by the authorities is without

any grant from the Government.

4. It is the case of the petitioner that the petitioner had raised a specific objection to respondent No.4 being permitted to run one more class for standard 11. However, ignoring such objection, the Director of Higher Education granted permission to respondent No.4 as prayed for. Similarly, in respect of the request of respondent No.4 for grant of recognition for running the primary school also, the petitioner had raised objection. The District Primary Education Officer, however, disregarded the objection of the petitioner and granted recognition to respondent No.4 for the primary school

5. Learned advocate for the petitioner submitted that the petitioner had raised a specific objection vide its letter dated 21.6.2004 against the request of respondent No.4 for additional class of standard 11. However, the authorities relied on a so called no objection letter dated 28.6.2004. He submitted that such a letter was never written by the petitioner and the petitioner's objection was never withdrawn.

6. Learned AGP Shri Gori submitted that the authorities proceeded on the basis of the said no objection and the authorities had no means to verify whether the same

was genuine or not and in fact, the authorities never suspected that the petitioner had any objection to the application of respondent No.4. He, however, upon inquiry from the officers stated that earlier the letter of objection dated 21.6.2004 was received by the authorities, the same however, was not taken into account while considering the case of respondent No.4.

7. Learned advocate Shri Arpit Kapadia for respondent No.4 submitted that respondent No.4 has been granted permission to add one more class to standard 11 considering all aspects of the matter. Respondent No.4 is running a high school since 1973 and that there will be no unhealthy competition contrary to what is suggested by the petitioner. He submitted that even the subsequent events would suggest that the decision of the Government has not caused any undue hardship or unhealthy competition. He submitted that the Government policy requires that respondent No.4 accommodates 15 students from outside the school and 5 students as per the suggestion of the Government. He submitted that this would ensure that respondent No.4 cannot poach on the students of other schools.

8. With respect to the decision of the Government to permit respondent No.4 to run a primary school, it was

contended by the learned advocate for the petitioner that though the petitioner had raised specific objection, the Authorities have not filed any affidavit justifying their stand and discarding the objection of the petitioner. He submitted that no reasons are forthcoming as to why the Authorities found it appropriate to permit respondent No.4 to run a primary school despite the objection of the petitioner and several other schools in the nearby vicinity.

9. Learned AGP Shri Gori supported the decision of the Government and suggested that the Authorities had taken into account the objection of the petitioner. After considering all aspects of the matter, it was found appropriate that permission as prayed for deserved to be granted. Learned advocate Shri Arpit Kapadia has submitted that there is nothing on record to suggest that the decision of the Authorities is illegal.

10. From the above aspects of the matter, one thing can be seen that the petitioner had raised a specific objection against respondent No.4 being permitted to add one more class to standard 11, such objection was lost sight of by the Authorities and the subsequent so called no objection was relied on by the authority,

veracity of which is in serious doubt. Similarly, with respect to the decision of the Authorities to permit respondent No.4 to start a primary school, no detailed reasons have been placed on record justifying such a decision. Nonetheless, on the basis of the permission granted by the authorities, respondent No.4 has already started imparting education in primary classes as also successfully run for one year an additional class in standard 11. Therefore, it would not be appropriate to strike down the orders passed by the authorities. However, the grievances of the petitioner cannot be ignored. In addition to the objection of the petitioner and other relevant material available with the Authorities at the time when such decision was taken, the Authorities would now have the advantage of the subsequent events whereby classes have been run for one full academic year. Considering all these aspects of the matter, I find it appropriate that the petitioner makes a representation to the respondent authority for reviewing the decision. If such representation is made within a period of ten days from today, the same may be considered and disposed of by the authorities after permitting respondent No.4 to oppose to the request of the petitioner. Both sides

will be at liberty to place all relevant material on record. The authorities will take a decision in accordance with law unmindful of the earlier orders granting permission. I have expressed no opinion on the rival contentions of the parties. The decision on the representation be taken expeditiously and in any case not later than eight weeks from the date of receipt of a copy of such a representation.

11. With the above dictions, the petition is disposed of. Rule is made absolute to the above limited extent with no order as to costs.

Direct service is permitted.

(Akil Kureshi, J.)

(vjn)